

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: FREDRIK LINDQVIST, ANTONI FERTNER
AND PAL FRENGERT

Application No. 09/584,796

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

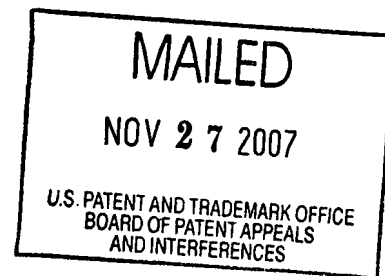
This application was received at the Board of Patent Appeals and Interferences on November 19, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

Summary Of Claimed Subject Matter

Appellant filed an Appeal Brief dated August 16, 2006, in response to the Notification of Non-Compliant Appeal Brief mailed August 11, 2006. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004. 37 CFR § 41.37(c) states:

(v) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference



characters.< While reference to page and line number of the specification **>requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 2-7 of the Appeal Brief filed August 16, 2006, is deficient because it does not separately map independent claims 1, 12, 18-20, 30 and 35 to the specification by page and line number, and to the drawings, if any.

Argument

Accordingly, the Appeal Brief does not comply with the new rules under 37 CFR § 41.37(c).

37 CFR § 41.37(c)(vii) states:

(vii) *Argument*. The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. **Each ground of rejection must be treated under a separate heading.** For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered

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an argument for patentability of the claim.

Appellant did not properly address each grounds of rejection under review separately.

EXAMINER'S CONSIDERATION OF REPLY BRIEF

The Examiner must consider and acknowledge receipt of the Reply Briefs filed January 12, 2007 and February 15, 2007, via written communication.

MPEP § 1208.03 states:

Under 37 CFR 1.193(b)(1), appellant may file a reply brief as a matter of right.... The primary examiner must then either: (A) acknowledge receipt and entry of the reply brief... or (B) reopen prosecution to respond to the reply brief.

CONCLUSION

Accordingly, it is


ORDERED that the application is returned to the Examiner to:

- 1) hold the Appeal Brief filed August 16, 2006, defective;
- 2) notify the appellant to submit a supplemental Appeal Brief which corrects the Appeal Brief, Summary of Claimed Subject Matter and Argument sections;
- 3) acknowledge and consider any supplemental Appeal Brief that is submitted by Appellant in response to the Notice of Non-Compliance to correct the Appeal Brief as required by 37 § 41.37(c)(1)(v) and (vii);

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- 4) consider the Reply Briefs filed January 12, 2007 and February 15, 2007; and
- 5) for such further action as may be appropriate.

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PJN/tsj

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